

THE FARM FINANCIAL CRISIS
POLICY AND LEGISLATIVE OPTIONS
A Discussion Paper

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**Manitoba
Agriculture**



THE FARM FINANCIAL CRISIS -- POLICY AND LEGISLATIVE OPTIONS

A DISCUSSION PAPER

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SUMMARY

THE FARM FINANCIAL CRISIS -- POLICY AND LEGISLATIVE OPTIONS

A DISCUSSION PAPER

At present, many farmers in Manitoba and throughout Canada are facing a serious financial crisis. In recent years, their incomes, cash flows, and equity have declined sharply. At the same time, debt loads have increased, often very substantially. The result is that many producers are in severe economic difficulty and in possible danger of losing their farms.

Further, there is little prospect, in the near future, for a significant improvement in the general farm financial situation. The likelihood of relatively low prices for major commodities such as wheat, oilseeds and beef means that farm incomes will continue to be depressed.

While the provincial government has introduced a number of major programs over the past four years, additional measures may be required in order to sustain many farm units in Manitoba.

In future, it is essential for farmers, financial institutions and governments to cooperate in addressing and working toward the resolution of major problems in agriculture.

The discussion paper recommends that the federal government should take immediate action to: (1) reduce interest rates, (2) expand markets for agricultural commodities, (3) develop and strengthen national stabilization programs and (4) reconsider its stated objective of cutting federal public expenditures on agriculture and of increasing user fees on producers.

In addition, at the national level, amendments are required to the Farmers' Creditors Arrangement Act or to the Bankruptcy Act in order to provide relief and support to farmers who cannot currently meet their debt obligations. Such legislation would provide for a court review of individual cases and, in certain circumstances, for an adjustment or write down of farm debt.

The Province of Manitoba, for its part, has three legislative options available:

1. Formalization of the Farm Financial Mediation Process -- Under this option, a board and a farmer advisory panel would be given legal authority to mediate disputes between farmers and their creditors.

2. Moratorium Legislation -- This legislation, if implemented, would postpone the repossession of a farmer's assets by a creditor for a specified period of time, possibly one to two years.

3. Contract Adjustment Legislation -- The purpose of this legislation would be to adjust farmer-creditor contracts, under certain circumstances. The discussion paper notes, however, that while the provincial government may be able to develop contract adjustment legislation, the federal government, constitutionally, is in a much stronger position to do so.

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A DISCUSSION PAPER

INTRODUCTION:

At present, many farmers in Manitoba and throughout Canada are facing a serious financial crisis. In recent years, their incomes, cash flows and equity have declined sharply. At the same time, debt loads have increased, often very substantially. The result is that many producers are in severe economic difficulty and in possible danger of losing their farms. A significant portion of these individuals are relatively young producers, who have attempted to establish or expand their farming operations over the past decade.

During the term of the present Administration, a number of major provincial programs have been launched to increase and stabilize farm incomes and to provide emergency assistance to those in severe financial distress. While these initiatives have been of considerable benefit, additional measures may be required in order to sustain many farm units in the province. One option that merits serious consideration is the introduction of farm debt legislation at the federal and provincial levels.

This discussion paper will explore the policy and legislative options available to the federal government and the provincial government in addressing current and future farm financial problems in Manitoba.

The paper will be divided into a number of sections. Initially, an assessment will be made of the current farm financial situation and of the prospects in agriculture over the near future. A description will be presented of major provincial programs, introduced over the past four years, to assist farmers, particularly those

encountering serious financial difficulties. Next, consideration will be given to outlining the legislative authority of the provincial and federal governments under our constitution. Finally, the paper will define the policy and legislative options available to both levels of government to assist and support producers in the province.

FARM FINANCIAL SITUATION IN MANITOBA:

In recent months, there has been considerable discussion about the financial problems in agriculture. Representatives of certain financial institutions have suggested that the problems are minimal: less than 5% of Manitoba farmers, they argue, are in serious financial trouble. The federal government, in a discussion paper released earlier this year, (Tax Issues in Agriculture) presents evidence to show that the "average" farmer is in a reasonably strong financial position. The paper, for example, reveals that the net worth of the "average" farmer is high relative to that of other Canadians. Farm taxable incomes and rates of return on investment are relatively favourable. And farm bankruptcies are very low compared to bankruptcies in other businesses.

Clearly, however, the evidence in the federal discussion paper and, more importantly, the conclusions drawn from it, grossly distort the real situation in agriculture. Available information indicates that, in fact, many farmers throughout Canada are facing a very serious financial crisis. The combined effects of low commodity prices, high production costs, high interest rates and adverse weather conditions have had a devastating impact on the financial stability of farmers over the past five to six years. Real farm incomes have fallen sharply, and debt loads have increased. The consequence is that more and more farmers are in danger of losing their farm operations.

In Manitoba and other provinces, real realized net farm incomes have declined significantly during the 1980's.

(Realized net income is a measure of cash income available for personal expenses, taxes and reinvestment after account is taken of all operating costs, including depreciation.) Annual real net incomes were lower in the period 1982 and 1983 than in any year during the preceding two decades; and the forecast for 1985 is for another year of very low farm incomes. The table below presents a comparison of (average) real realized net farm incomes in Manitoba for 5 year periods beginning from 1966 and extending to the present.

Period	Average Annual Real Realized Net Farm Income for Manitoba Farms in \$ 1971	Average Annual Real Realized Net Farm Income Per Manitoba Farm in \$ 1971
	((\$000))	
1966-1970	142,238	3,744
1971-1975	218,281	6,500
1976-1980	138,322	4,456
1981-1985	87,828	3,065

The data indicate that during the first half of the 1980's, Manitoba's (real) farm incomes have fallen dramatically. A parallel trend is evident throughout the rest of Canada.

Declining incomes have been accompanied by a massive increase in farm debt. The value of land and capital on Manitoba farms has risen by sixfold over the period 1971 to 1981 -- from \$59,000 per (census) farm to \$355,000 per (census) farm. In order to farm, producers, especially younger ones, have had to rely increasingly on the use of debt capital. Increased borrowings, together with a huge increase in the cost of borrowed capital over the past five to six years, have expanded farmers' debt obligations greatly. A recent survey, conducted by the federal Farm Credit Corporation, shows that Manitoba farmers

have outstanding liabilities of \$1.7 billion or \$80,000 per farm. Of the approximate 5,600 farmers who are in moderate to severe financial difficulty, average debt loads are in the range of \$160,000 to \$180,000 per farm. Farmers in Manitoba with lowest equity have average debt loads of \$220,000. Since these figures are averages, it should be understood that many producers have debt obligations that are several times greater than these amounts.

The majority of farmers in Manitoba and in other provinces are, at present, in a reasonably secure financial position. The FCC survey shows that average equity rates in agriculture are around 80% (although these rates are falling due to the continued decline in price of farmers' principal asset, land). Indeed, some producers have few if any liabilities. Unfortunately, these figures, like many averages, mask the precarious financial situation of a significant portion of farmers in the province. The survey alluded to, reveals that over 3,600 farmers or 17% of commercial producers in Manitoba are encountering severe difficulty and are in possible danger of losing their farms. To be placed in this category -- for purposes of the survey -- a farmer must meet one of the following criteria:

1. Debt expenses are greater than 40% of farm sales,
2. Total borrowings, intermediate and long term, are greater than 110% of total investment, or
3. Net worth is less than 15% of total assets.

A further 1,926 farmers are encountering "moderate" difficulty (e.g., equity rates are under 25%). In total, then, about 25% of Manitoba's commercial producers are enduring very difficult economic times.

It should be noted that a large portion of those in financial distress are relatively young producers. The FCC data reveal that of those Manitoba producers with the least amount of equity (0% - 61%) the average years of farming experience are 10 years. By contrast, those with

the greatest equity -- 77% to 97% and 97% to 100% -- have 24 years and 32 years respectively of farming experience.

In recent years, 50 to 60 Manitoba producers annually have been forced to declare bankruptcy. These numbers, though, are simply the tip of the iceberg. While precise figures are not available, it appears that each year hundreds of Manitoba farmers are forced to sell their farm units and to leave agriculture, due to inadequate incomes and to inability to meet existing debt obligations. This represents a serious loss to agriculture and to the rural communities of which these individuals are a part.

PROVINCIAL GOVERNMENT PROGRAMMING:

In order to assist and support farmers in these difficult times, the provincial government, over the past four years, has launched a number of major programs. The programs have been directed at assisting farmers to:

- maintain and increase their incomes
- stabilize farm incomes
- enhance productivity
- sustain those farming operations where excessive farm debt is a serious problem.

The new programs may be placed into at least three major categories: farm management, livestock stabilization and financial and credit assistance.

Farm Management:

A major priority of the Department of Agriculture, over the past four years, has been to assist farmers to upgrade their technical and financial management skills. The activities of departmental staff have been reoriented to place increased emphasis on provision of intensive financial and production management counselling to individual farmers. Assistance has been provided in response to individual requests and in support of specific program initiatives.

Through the Interest Rate Relief Program, for example, intensive counselling has been extended to well over 1,000 producers, most of whom are in severe financial difficulty. Recently, the Department has established a farm business group program, a program which provides farmers with two years of intensive farm management training. Farm business groups have been organized in all agricultural regions in Manitoba, and enrolment stands at over 600 producers. Similarly, the Beef Consult Program has been formed to extend intensive production and financial management training to beef producers in Manitoba.

Livestock Stabilization:

In response to the structural and severe financial problems of the beef industry, Manitoba introduced the beef stabilization program in the fall of 1982.

The program has been aimed at strengthening the long term viability of the beef industry by: (a) protecting farmers against severe declines of income occasioned by weak commodity prices or other factors, (b) promoting further finishing of cattle in the province, and (c) ensuring that, through the use of a central selling agency, producers receive a fair return on their marketings.

Manitoba has extended approximately \$45 million (of which \$24 million is in the form of a loan) to over 6,000 beef producers in the province. About 75% of Manitoba's cow herd is supported by the program.

Similarly, under Manitoba's hog stabilization program, approximately \$21 million of payouts have been made to producers to cover over 50% of hogs marketed. The provincial contribution has been \$12 million, of which \$8 million is in the form of a loan.

Financial and Credit Assistance:

A number of major financial programs have been developed to assist farmers, mainly younger producers, lower income producers, and those in financial distress.

The main programs are outlined below:

1. Provision of Long Term Credit -- The Manitoba Agricultural Credit Corporation (MACC) has expanded its long term credit assistance to producers. It currently provides \$30 million to \$40 million of direct loans annually to farmers, with limited equity, for purposes of establishing or expanding their operations or of consolidating their existing debts. The clients of MACC are generally younger producers, with modest incomes and limited equity (clients, to qualify for assistance, must have a net worth of under \$185,000).

2. Interest Rate Relief for Farmers -- This program, introduced in 1982, has provided emergency assistance to lower income producers, who are in financial difficulty and in danger of losing their farms. Approximately \$11 million of assistance has been extended to over 1,200 producers. In addition, many of these individuals have received intensive farm management counselling from regional extension staff.

3. Guaranteed Operating Loan Program -- Established in 1983, this program guarantees a portion of the operating credit provided by the banks to relatively high risk clients. It is primarily of benefit to farmers who are encountering financial problems. During the past two fiscal years, the program has assisted 700 farmers to secure operating loans of \$25 million in 1983-84 and \$40 million in 1984-85. It is estimated that \$40 million of loans will be guaranteed during the current fiscal year.

4. Interest Rate Reduction Program -- Under this initiative, MACC clients have been given the option of "buying down" their interest rates. The program has enabled recipients of 640 MACC loans to reduce their loan repayments by over \$18 million.

5. Farm Financial Mediation Panels -- The panels have been established to provide advisory assistance to producers in financial difficulty, to facilitate effective

communication between farmers and their lenders and to assist in the resolution of disputes. To date, the panels have played an effective role in a limited number of cases.

6. 8% MACC Write Down -- In March of 1985, MACC wrote down its interest rate on outstanding (fixed term) loans to 8% for the fiscal year 1984-85. This action has had a twofold objective: (a) to provide immediate cash assistance to MACC clients, most of whom are younger or beginning farmers, and (b) to direct a clear message to Ottawa, that interest rates are excessive and should be reduced immediately to single digit levels (and ideally no higher than 3 percentage points above the rate of inflation). Under this program, \$4.7 million of assistance has been provided to over 3,000 producers.

7. Comprehensive Refinancing Program -- The program, which applies to the fiscal year 1985-86, provides \$20 million of loans, at 9 3/4%, for purposes of debt consolidation. It is aimed at assisting farmers, in severe financial distress, to work toward long term viability. Where required, intensive farm management counselling will be coupled with provision of financial support.

FUTURE FARM ECONOMIC PROSPECTS:

There is little doubt that provincial agricultural programs have been of benefit to farmers in Manitoba. Nevertheless, the fact remains that many producers continue to face a fairly bleak future. Some are at or near the liquidation stage; others will be in that position in the near future.

Over the coming years, there is little prospect for significant improvement in the general farm financial situation. Most economists agree that even in the absence of any significant adverse trends in world trade, cereal grain and oilseed prices are likely to increase only slightly over the next five years. With the prospect of a static and possibly declining demand for beef, the market

prospects for this important commodity are not very promising.

In the best case scenario, most farmers, in the near future, will do well simply to hold their own. Unfortunately, several factors could contribute to a possible decline in real incomes and to a further erosion of farmers' equity. The major factors are as follows:

1. International Grain Prices -- There is considerable uncertainty about future world grain prices. The U.S. Administration has proposed drastic reductions in farm support levels, especially for grains. While the actual changes in support levels will not be finalized until late 1985, it is very likely that U.S. target prices and loan rates for cereals and oilseeds will be reduced, and possibly very substantially. The result could be a substantial drop in the prices of our export grains and oilseeds, combined with a build up of surpluses on farms, if export markets are lost.

Similar problems could be encountered if the value of the Canadian dollar appreciates relative to the U.S. dollar. Many economists anticipate that a slowdown in the U.S. economy, lower interest rates and declining capital inflows to the U.S. will occur, lowering the U.S. dollar relative to other currencies, including the Canadian dollar. If this happens, world prices for cereals and oilseeds (expressed in Canadian dollars) will decline, as will our total sales abroad.

2. Export to Foreign Markets -- In the near future, Canada may face two additional problems in attempting to penetrate foreign markets. First, there is a growing trend toward protectionism and toward aggressive export market promotion, which includes provision of export subsidies for sale of surplus grain. The U.S., to market its huge grain surpluses and to counter the export subsidy programs sponsored by the European Economic Community, may provide very substantial export subsidies as a means of

marketing its cereal grains abroad. This action could have serious implications for the export of Canadian agricultural commodities. Second, it is possible that grain production of centrally planned economies, particularly the U.S.S.R., could increase in the coming years. If this happens, Canadian wheat exports to these countries would suffer.

3. Canadian Government Policy -- The future prosperity of the agricultural sector will also depend on the future direction of Canadian agricultural policy. In a period of extreme difficulty, it is essential to maintain and strengthen its support and services to the agricultural sector. Unfortunately, recent budgetary announcements indicate that the federal government intends to cut back its support and services, by reducing Agriculture Canada's annual expenditures by \$50 million in 1985-86 and by a similar amount in the years following. Further, it appears that Ottawa plans to raise user fees, thereby increasing farmers' costs of production. These actions, if implemented, will adversely affect the development of Canada's agricultural sector.

In summary, then, the prognosis for the near future is not very promising. Over the next five years, it is very unlikely that real farm incomes will increase to any significant extent. Further, if Canada's world trade position deteriorates and if the federal government pursues its policy of retrenchment in agriculture, Canada's farmers could be in for some very difficult times ahead.

FARM DEBT LEGISLATION -- CONSTITUTIONAL ISSUES:

In view of the existing and potential future problems in the agricultural sector, governments and financial institutions should begin to reassess their policies and programs and to explore new initiatives to assist producers. One option to be considered is the introduction of farm debt legislation by the federal and provincial governments. Before various options and

recommendations are presented, the respective legislative powers of the two levels of government, with respect to constitutional jurisdiction, will be outlined.

The Constitution Act of 1867 (formerly the British North America Act) distributed the governmental powers of the Crown into two segments, the federal Crown and the provincial Crowns. The delineation of legislative authority is found primarily in Sections 91 and 92 of the Act. Section 92 granted the Legislature of each province exclusive authority to pass laws in relation to certain classes of subjects, including:

- property and civil rights
- administration of justice in the Province --
including procedure in civil matters
- generally all matters of a merely local or private nature in the province.

Section 91 of the Act extended to the federal Parliament the exclusive authority to make laws in relation to other classes of subjects, including:

- interest
- banking, and
- bankruptcy and insolvency.

The powers enumerated in Sections 91 and 92 are not exhaustive. Both the provincial Legislatures and the federal Parliament (Section 95) are granted the authority to pass laws concerning agriculture, with federal laws to overrule provincial laws in cases of conflict.

In the past, the scope of authority exercised by each level of government has been referred to the Privy Council or to the Supreme Court for interpretation and clarification. Human activities, including those pertaining to farmers and their creditors, are often too complex to fall into a single subject area. Farm debtor-creditor relations, for example, may relate to property and civil rights, and may also relate to banking, interest or bankruptcy and insolvency. The Privy Council and the

Supreme Court have frequently been called upon to define the principal objective or "pith and substance" of specific acts passed by provincial Legislatures or by Parliament. If the legislation is found to deal primarily with issues like property and civil rights or the administration of justice within a province, then the Courts have ruled that the legislation is within the jurisdiction of provincial governments; if it deals mainly with banking, bankruptcy or insolvency, the Courts have ruled that the legislation is within the exclusive authority of Parliament.

Based on the interpretation of provincial legislation by the Privy Council and the Supreme Court, it appears that provinces have legislative authority in at least three major areas in respect of farmer-creditor relations:

- the authority to regulate on matters pertaining to ownership of property,
- the authority to regulate procedure in civil matters, such as foreclosure and mortgage sale processes,
- the authority to regulate contractual relations between its residents.

Since Confederation, provincial Legislatures have exercised their legislative powers relating to property and civil rights, contracts, and proceedings before the Courts, through a series of statutes. The purpose of this type of legislation has been to provide relief to debtors from the harsh effects of the Common Law. Exemption legislation -- usually in the form of Execution Acts, Garnishment Acts, Judgement Acts, Foreclosure Acts and Limitation Acts -- has exempted certain assets of debtors from seizure by creditors. Procedural legislation has created procedures to be followed by creditors in enforcing their security, and has established time limitations on taking action against debtors. The right of the provinces to develop these types of statutes has not been seriously challenged in the Courts.

Provincial governments have also played an important role in (a) facilitating communication between farm debtors and creditors and in (b) imposing a moratorium, for a specified period of time, on actions by creditors to repossess debtors' property. In Saskatchewan, for example, the Provincial Mediation Board Act facilitates voluntary mediation between farmers and their creditors. In 1971, the same province imposed a one year moratorium on realization proceedings in respect of farm land, equipment and livestock. And more recently -- in December of 1984 -- Saskatchewan has imposed a moratorium on foreclosures on farm land for a period of one year (the Lieutenant Governor in Council has the power to extend the moratorium for a second year).

It appears that provincial moratorium acts have survived, in large measure, because they are temporary in nature, general in application, and are aimed at postponing, rather than annulling, realization proceedings against farmers.

Finally, provinces have considerable authority to regulate contracts, which may affect the financial arrangements between provincial residents. For instance, the Supreme Court upheld the validity of Ontario's Unconscionable Transactions Relief Act (1960), an act which authorized the Court to modify the terms of money lending agreements that were deemed to be harsh and unconscionable.

Nevertheless, provincial powers in this area are limited. The Supreme Court and Privy Council disallowed Alberta's Debt Adjustment Act (1937) on the grounds that it attempted to adjust the debt obligations of insolvent debtors. The Courts found that the Act infringed on the bankruptcy and insolvency authority of the federal government; hence, Alberta's legislation was declared to be ultra vires. Saskatchewan, in the 1940's and 1950's, attempted to achieve essentially the same objective by passing two related laws, the Provincial Mediation Board Act

and the Moratorium Act. The Supreme Court ruled that the Moratorium Act (when combined with other statutes) was simply a "colourable" device to achieve indirectly what the province could not achieve directly -- the compulsory adjustment of debts owing by insolvent debtors.

It should be observed that Manitoba's Debt Adjustment Act remained in force from the early 1930's until 1963, when it was repealed by the provincial Legislative Assembly.

The delineation of powers in Canada's constitution and the interpretations of the Courts over the past century, point to a number of conclusions concerning provincial authority with reference to farm debt adjustment legislation:

1. With its powers over property and civil rights, provinces have some authority to regulate contracts, including those between debtors and creditors.
2. Provincial debt adjustment schemes, similar to those in the 1930's and 1940's, are not likely to survive a court challenge because they intrude into the area of bankruptcy and insolvency, a legislative domain restricted exclusively for the federal government.
3. Provincial contract adjustment legislation, involving the modification of interest owing to creditors, does not appear to be within the powers of a provincial government because it addresses a subject matter, interest, which is under the exclusive jurisdiction of Parliament. The same can be said for provincial legislation which abrogates the right of banks to carry out activities authorized under Canada's Bank Act.

The federal Parliament, with its powers over banking, interest and bankruptcy and insolvency has extensive authority over farm debtor-creditor relations. The terms and conditions under which Canada's chartered banks operate are defined in the Bank Act; and Canada's monetary policy is regulated through the Bank of Canada.

Matters pertaining to bankruptcy and bankruptcy proceedings are governed by the provisions of Canada's Bankruptcy Act.

The federal government, from time to time, has enacted legislation to provide relief to farmers and other debtors who are in serious economic straits. These initiatives, though, have had limited application and have been short lived.

Ottawa, for example, passed the Farmers' Creditors Arrangement Act in the 1930's and later amended it in the 1940's. The legislation authorized the Courts, to work out debt adjustment arrangements between insolvent farm debtors and their creditors. The Act was, however, of limited benefit to farmers -- particularly after the mid-1930's -- since it applied mainly to debts incurred prior to May 1, 1935. During World War II, the federal government passed an Order in Council under the War Measures Act which empowered the Courts to stay proceedings against farm debtors, postpone payments, and prescribe terms and conditions that were required to ensure that farmers were retained on the land. More recently, in 1983 and 1984, amendments were proposed to Canada's Bankruptcy Act, which would allow the Courts to provide relief to insolvent debtors, including farm debtors, by staying proceedings against them and by working out arrangements which could involve the rescheduling or adjustment of debt. The proposed legislation, Bill C-17, died when Parliament was dissolved prior to the last federal election.

POLICY AND LEGISLATIVE OPTIONS:

In this final section, an assessment will be made of the policy and legislative options available to the Governments of Canada and Manitoba to deal with the farm financial crisis.

Throughout the paper, it has been argued that farmers, over the coming years, are likely to encounter some very difficult economic times. At present, over 3,600

Manitoba producers, mainly younger farmers, are in severe financial trouble and in danger of losing their farms. If farm economic conditions do not improve, and even more so if they deteriorate, the numbers and proportion of producers who are forced to give up farming and to leave their rural communities could increase substantially.

At present and in the near future, it is essential for governments, financial institutions and farmers to cooperate in working toward the resolution of major problems in agriculture. Each of the major participants in the agricultural sector has certain obligations to bear.

Farmers, for their part, need to continually upgrade their production and financial management skills. Every effort should be exerted to make efficient use of available resources and to maximize productivity. Wherever possible, they should avail themselves of existing crop insurance and crop and livestock stabilization programs. These programs are of critical importance as a means of protecting farmers against unexpected shortfalls of income.

Financial institutions ought to work cooperatively with and, where possible, arrange for realistic restructuring of loan assistance to producers, especially to those who have serious problems meeting their existing debt obligations. These institutions have all too often played a role in supporting and encouraging farmers to acquire land or capital, purchases which could not be supported by the productive potential of these assets. The result is that many producers are now saddled with huge debt obligations which they cannot repay.

Having contributed to the problem, financial institutions must now accept their social responsibility to work with their clients and, in certain cases -- particularly where poor production and financial management is not a critical issue -- provide appropriate financial concessions to producers. The banks, in the past, have extended massive concessions to certain large corporations

and to foreign governments. Surely similar consideration and support should now be given to the farmers of Canada!

The federal government also has a major role to play in creating an environment conducive to the development of agriculture. Four issues that deserve immediate attention by Ottawa are as follows:

1. Ottawa should abandon its high interest rate policy, a policy which has inflicted irreparable damage on the Canadian economy, and in particular on the farm sector. Since 1981, real interest rates have reached unprecedented levels in Canada. There is a need, then, to reorient Canada's monetary policy, by reducing and maintaining interest rates at single digit levels. Ideally, rates should be maintained at a level no higher than three percentage points above the rate of inflation.

2. Every effort must be made at the federal level to expand markets for agricultural commodities, and more specifically, to eliminate artificial barriers that constrain the movement of Canadian agricultural products into foreign markets.

3. There is a need to develop and strengthen national stabilization programs and to make existing programs, such as the Western Grains Stabilization Program, more responsive to the needs of individual producers, and

4. The federal government should reconsider its stated objective of cutting agricultural expenditures and of increasing substantially user (i.e., payment for federal government services) fees on producers. At a time of extreme economic difficulty, it is counter productive to reduce or eliminate essential services to farmers and/or to increase substantially their costs of production. This is even more the case if increased farm user fees cover expenses of services that benefit the entire Canadian populace (e.g., meat inspection and grading services).

In addition, the federal government could provide critical support to farmers in financial trouble by passing

appropriate amendments to the Farmers' Creditors Arrangement Act or by amending the Bankruptcy Act along the lines proposed in the former Bill C-17. The amendments would empower the Courts -- with the assistance of panels comprised of farmers -- to examine a farm debtor's financial situation, to assess the extent of his debt obligations and to participate in the formulation of a proposal which could result in the rescheduling, the set aside or the write down of farm debt. This type of legislative scheme would not, of course, resolve the problems of every insolvent farmer. It could, however, provide critical assistance to farmers who are reasonable managers, who are in financial difficulty due in large part to factors beyond their control and who have a strong prospect for future survival, with some adjustment in their debt obligations.

It should be noted that the federal government has recently expressed its intention to amend the Bankruptcy Act and, in particular, to introduce measures to assist farmers in financial trouble. The benefits to farmers will depend, of course, on the nature of the amendments and on how quickly they are introduced.

Finally, Manitoba, like other provinces, has a responsibility to maintain and strengthen its programs, aimed at increasing and stabilizing farm incomes and at providing assistance to farmers in financial difficulty. Many farm support programs have been introduced over the past few years. A continuing effort will be required to monitor programs and, where necessary, improve and strengthen them.

In view of farmers' current problems and the possibility of even more difficult times ahead, additional efforts may be warranted. In particular, provincial legislative action deserves serious consideration. There are at least three legislative options that could be considered by Manitoba:

1. Formalization of the Farm Financial Mediation Process

Over the past two years, the farm financial mediation panels in Manitoba have served as an effective vehicle for facilitating communication between farm debtors and their lenders and for resolving disputes between them. Farmer participants on the panels have developed a credible reputation for being both effective and fair.

Manitoba could strengthen and formalize the role of these panels through the introduction of farm financial mediation legislation. Mediation legislation could serve as a means of identifying farmers in financial distress and provide for dissemination of information to them.

Under this proposed legislative option, all farmers, who are concerned about their ability to meet their loan repayment obligations, could contact a central mediation board for advice and assistance. The board in turn would appoint a farmer advisory panel, which would provide advisory assistance to producers and, where necessary, would arrange for meetings between farmers and their creditors. For purposes of the mediation process, the board and panel would be granted extensive powers of inquiry. All agreements reached through mediation would be legally binding on both parties.

As the name suggests, mediation is a strictly voluntary process. Its effectiveness and success are dependent upon the cooperation of both farmers and their creditors.

Mediation legislation could also include the introduction of the judicial process into realization proceedings. The Courts could be authorized to review impending foreclosures and, in particular, to examine the entire social and economic situation of a farmer, not just his ability to repay his debts. Based on the review, the Courts could permit a foreclosure to proceed or, alternatively, could provide for a temporary postponement of

proceedings. Under certain circumstances, this type of delay could be of considerable benefit to farmers.

2. Moratorium Legislation

A second option is farm debt moratorium legislation. Under this option, the Lieutenant Governor in Council would stay realization proceedings against farmers for a specified period, during times of general crisis in the farm community. This type of legislation may be warranted in the future, particularly if farm financial conditions do not improve and, even more so, if conditions deteriorate.

Saskatchewan, as observed, enacted such legislation in 1971 (for a period of one year) and again in December of 1984. The objective of the latter piece of legislation, the Farm Land Security Act, is to impose a one year moratorium on foreclosures on farm land. The Act, though, allows a mortgagee to apply to the Court of Queen's Bench for an order that the legislation not apply to a particular action which the lender wishes to commence or continue against a farmer. To secure an exemption from the provisions of the Act, a mortgagee must establish that a farmer has no reasonable possibility of meeting his debt obligations under the mortgage or that the farmer is not making a sincere and reasonable effort to meet his obligations.

The main advantage of moratorium legislation is that it provides temporary relief to farmers in difficult economic times. In certain circumstances, it could provide farmers with an opportunity to restructure their farm operations and/or their financial affairs. The restructuring, combined with other favourable developments (e.g., weather conditions), would allow certain producers to improve their financial position and to begin an effective recovery.

Moratorium legislation is particularly justifiable in periods (such as the present) of severe financial distress.

There are certain disadvantages, though, to this type of legislation. Three such problems are as follows:

a. The relief available under provincial authority may only be temporary, for a period of one to two years.

b. Interest on outstanding debt would continue to accumulate during the moratorium period, and

c. The legislation is of limited value if it applies, as in Saskatchewan, strictly to a single asset, land.

In Saskatchewan, financial institutions may not foreclose on land without permission of the Courts; yet, these same institutions are entitled to repossess a farmer's machinery and equipment, livestock, grain or grain inventories or any other asset, apart from land, on which the institutions have taken security. The Saskatchewan farmer, then, may retain his land with no possible means of farming it.

In general, to be effective, moratorium legislation should apply not only to land but to all productive farm assets, including machinery and equipment and livestock.

CONTRACT ADJUSTMENT LEGISLATION:

The final option to be considered is contract or debt adjustment legislation.

The purpose of such legislation would be to provide relief and support to farmers in financial distress through the adjustment of debtor-creditor obligations. In these difficult economic times, relief for insolvent farm debtors is justifiable and essential, particularly in those situations where inadequate farm management is not a major cause of current financial problems.

As stated, the federal Parliament, with its exclusive authority over banking, interest and bankruptcy and insolvency, is in the most advantageous position to

introduce debt adjustment legislation -- either by updating the Farmers' Creditors Arrangement Act or by introducing amendments to the Bankruptcy Act.

Nevertheless, provinces also have limited powers to regulate contractual relations between farmers and their creditors and may have some scope for initiating legislation in this area. It appears that the extent of these powers have not yet been fully tested in the Courts.

In the past, as noted, provincial governments in Alberta, Saskatchewan and Manitoba have developed debt adjustment legislation to protect farmers against seizure of assets and to assist them by establishing more realistic repayment schedules. The legislation, however, has either been repealed or declared ultra vires (on the ground that it conflicts with federal authority over bankruptcy and insolvency). In all likelihood, legislative schemes similar to those developed in the 1930's and 1940's would again be struck down by the Courts.

Further, provinces would be hard pressed to prevent or to compensate for a possible withdrawal of loan capital from agriculture by financial institutions. The federal government is in a more advantageous position to ensure that the banks and other financial institutions continue to fulfil their social and financial obligations to the farmers of this country. For this reason, as well, Ottawa can more effectively implement legislation, aimed at providing relief to farmers in distress through the rescheduling or write down of farm debt.

It is possible that provinces, such as Manitoba, through appropriate drafting, could develop legislation which would have some of the characteristics of previous farm debt adjustment legislation, but which would eliminate the defects of past provincial acts. However, to be sound constitutionally, it is possible that such legislation would be of limited effectiveness. To be highly effective, such legislation could contain provisions that would be challenged and possibly declared ultra vires by the Courts.

In summary, then, the main legislative options available to the Province of Manitoba with respect to farm debt legislation are to develop (a) farm financial mediation legislation, possibly coupled with judicial intervention into realization proceedings, and (b) moratorium legislation which applies to land, equipment, machinery and livestock. The drafting of some form of provincial debt adjustment legislation may be feasible but, as argued, such legislation could more effectively be developed and implemented at the federal level.

CONCLUDING COMMENTS:

Having outlined the main policy and legislative options, the Province of Manitoba welcomes the advice and opinions of farmers, representatives of farm organizations and the public at large.

At present and in future it is essential for governments, financial institutions, farmers and the general public to work cooperatively in addressing the major issues and problems pertaining to the farm financial crisis in Manitoba.

Hopefully this paper will serve as a basis for an effective discussion of these issues.